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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	WT Docket No. 98-143
)		
1998 Biennial Regulatory Review --)	RM-9148
Amendment of Part 97 of the Commission's)	RM-9150
Amateur Service Rules.)	RM-9196
)	
)	

REPORT AND ORDER

Adopted: December 22, 1999)	Released: December 30, 1999
)	

REQUEST FOR DECLARATORY RULING

by: Larry L. Learn ("Petitioner")
2031 Shadeview Ct.
Dublin, OH 43016
<learnl@oclc.org>
2000 January 3

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Summary

The Petitioner observes that (1) The American Radio Relay League, Incorporated, (the "League") Volunteer Examiner Coordinator ("VEC") has published¹ its intent to accept Certificate of Successful Completion of Examination ("CSCE") for Element 4B of current license examination requirements as sufficient and valid evidence, neither having met the remainder of the requirements for grant of the Amateur Extra Class License by the Commission (i.e., Element 1C) under the current license examination regime, nor having met the more stringent written examination requirements under the new licensing regime ordered by the Commission in the above referenced Order, for grant by the Commission of an Amateur Extra Class license; (2) The Petitioner further observes that Commission specifically denied the request by the League to grant automatic upgrade of license class or privileges to holders of existing licenses solely on the basis of the license restructuring ordered by the Commission in the above referenced Order; (3) The Petitioner purports that to allow the grant of the Amateur Extra Class license to applicants that have neither met the Commission's requirements for that class of license under the previous nor under the new licensing regime is unreasonable, inequitable, and unduly discriminatory against both those license applicants of whom the Commission has required to meet the full licensing requirements under the previous licensing regime, and further to future candidates for the Amateur Extra Class license that the Commission would require to fulfill the more stringent requirements of the new licensing regime mandated by the above referenced Commission Order; and, (4) The Petitioner respectfully seeks a Declaratory Ruling by the Commission that no individual or organization be issued a grant of license of any class within the Amateur Radio Service without having successfully met either the full requirements of the previous licensing regime prior to the effectiveness of the new licensing regime, or having fully met the requirements of the new licensing regime subsequent to the effective date of said Order.

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To: The Chief, Private Wireless Division)	
Wireless Telecommunications Bureau)	
)		

REQUEST FOR DECLARATORY RULING

The Petitioner ("Larry L. Learn"), pursuant to 47 C.F.R. §§ 1.2 and 1.41, hereby respectfully requests that the Commission issue a Declaratory Ruling at an early date clarifying that "no individual or organization be issued a grant of license of any class within the Amateur Radio Service without first having successfully met either the full requirements of that grant by the Commission of said license under the previous licensing regime prior to the effectiveness of the new licensing regime ordered by the Commission on 1999 December 22, or having fully met the requirements of the new licensing regime subsequent to its effective date under the Commission's December 22 Order." In support of its request, the Petitioner states as follows:

Background & Argument

In its 1999 December 22 Order the Commission observed:

"15. We are not adopting the ARRL suggestion that we automatically upgrade Novice and Technician Plus Class licenses to the General Class, or the suggestion of others that we automatically upgrade Advance Class licenses to the Amateur Extra Class operator license. We note that the privileges of a General Class licensee in the MF and HF bands are significantly different than a Novice Class licensee. We also note that grandfathering Novice and Advanced Class licensees is consistent with both the ARRL's overall request that no change in the license structure be made that would reduce the privileges of any existing licensee, and other commenter's requests that licensees not receive additional privileges without passing the required examination elements. We believe that both of these concerns are reasonable and that they are satisfied by grandfathering licensees. Similarly, we will not grant the request of commenters that we upgrade the operator privileges of individuals who held a Class A operator license prior to 1951 to Amateur Extra Class operator privileges. As we have stated, the Amateur Extra Class operator license was a new class of operator license in 1951 and no licensee was converted or grandfathered to Amateur Extra Class. Consequently, we are not persuaded that a different approach is warranted in light of our actions in this proceeding."

The Petitioner interprets this as an intent by the Commission to circumvent any unwarranted (i.e., 'unearned') increase in either license class or license privileges based solely on the procedures accompanying the transition between licensing regimes duly established by the Commission, and the Commission's intent that any and all license grants by the Commission be fair, equitable, reasonable, non-discriminatory, and based on the appropriate, equitable and uniform fulfillment of all requirements established by

the Commission for grant of such license.

Further, in Appendix B (Final Rules) to its 1999 December 22 Order the Commission stated:

" 2. Section 97.9 is amended by revising paragraph (b) to read as follows:

§ 97.9 Operator license.

(a) ***

(b) The person named in an operator license grant of Novice, Technician, Technician Plus, General or Advanced Class, who has properly submitted to the administering VEs a FCC Form 605 document requesting examination for an operator license grant of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first."

The Petitioner contends that this statement is infactu clarification by the Commission that duly submitted applications for bonafide license grant/modification under the previous license regime would be appropriately considered on their merits by the Commission, and not automatically dismissed with the effectiveness of the newly ordered licensing requirements of the Commission. The Petitioner further contends that it was not the intention of the Commission to establish a 'loop hole' whereby an applicant could circumvent both the requirements of the old license regime (i.e., not fully having met the requirements by virtue of not having successfully passed Element 1C), as well as the new license regime (i.e., not having met the more stringent written examination requirements of the new regime).

Further, the Petitioner contends that to allow the grant of a license by the Commission where the applicant had not duly fulfilled the license requirements of either the old or the new license regime, due solely to the opportunistic timing of the application, is unreasonable, inequitable, and unduly discriminatory to both those license applicants of whom the Commission required full compliance with the old licensing regime, and unreasonable, inequitable, and unduly discriminatory to those applicants of whom the Commission would require the passage of the more stringent written examination requirements under the new licensing regime.

Further, the Petitioner purports to establish standing to initiate this petition based upon the fact that Petitioner holds a current Amateur Extra Class license grant (AA8JY) by the Commission, and as such is a member of that class of individuals/organization that would experience discriminatory treatment unless the Commission acts favorably upon this request for Declaratory Rulemaking.

Respectfully submitted by,

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2000 January 3

¹ " The effective date provides a window of upgrade opportunity for current Advanced licensees. Between now and April 15, current Advanced holders may take the existing Element 4B, a 40-question test, giving them credit for having passed the current Extra written examination. Likewise, holders of a Certificate of Successful Completion of Examination (CSCE) for Elements 3B or 4B dated on or after April 17, 1999, will be able to qualify for General or Amateur Extra respectively when the new rules go into effect on April 15, 2000"; <http://www.arrl.org/news/restructuring/>.